

Juvenile Sentence Reconsideration Proposal

Three times in the past seven years the United States Supreme Court has held that, “because juveniles have lessened culpability, they are less deserving of the most severe punishments.”¹

In the *Roper* case the Court held that the U.S. Constitution bars capital punishment for children. In the *Graham* case the Court held that the Constitution prohibits a sentence of life without parole for a child convicted of a non-homicide offense. The state must give the child a “meaningful opportunity” to obtain release before the maximum term of the sentence imposed “based on demonstrated maturity and rehabilitation.”

Based on the *Graham* case, the Commission recommended in its annual report of January 2012 that the legislature create a procedure whereby a child sentenced to a lengthy term of imprisonment would have a meaningful opportunity, after service of a portion of the sentence, to obtain release by demonstrating maturity and rehabilitation.

The *Graham* case dealt only with juveniles convicted of non-homicide offenses. In the *Miller* case, however, the Court held, again based on the lessened culpability of children, that the Constitution forbids a mandatory sentence of life without parole even for children convicted of homicide.

A working group of Commission members has reached agreement on the issues raised by a bill to provide a “meaningful opportunity” for a child sentenced as an adult for serious offenses, including homicide and capital felony, to obtain release on parole after serving a portion of the child’s sentence. The Commission will be asked to consider the group’s recommendations at its September 20 meeting.

¹ *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. ____ (2010); *Miller v. Alabama*, 567 U.S. ____ (2012).

Background:

At its January meeting, the Full Commission decided that a Working Group would meet to try to reach agreement on specific statutory language addressing the issue of the reconsideration of juvenile sentences. Michelle Cruz, Robert Farr, Kevin Kane, Deborah Del Prete Sullivan, Erika Tindill and Thomas Ullmann volunteered to serve on the Working Group. Over the course of ten lengthy meetings, the Working Group agreed on the elements of a bill to implement the recommendation of the Commission in its January 2012 report.

Summary:

Current law provides that individuals who commit crimes when they are under the age of 18 are subject to the same parole rules as adults: they are ineligible for parole for certain crimes, and eligible after 85% of the sentence for many other crimes. In addition, if a person is convicted of a capital felony and was under the age of 18 at the time of the offense, the court must impose a sentence of life imprisonment without the possibility of release.

The Working Group's draft bill applies to individuals serving sentences of more than ten years based on crimes committed under the age of 18. The bill provides:

- Juvenile offenders serving sentences of sixty years or less will be eligible for parole after serving one-half of their sentence or ten years, whichever is greater.
- Juvenile offenders serving sentences of more than 60 years will be eligible for parole after serving 30 years (one-half of a life sentence).
- Eligibility for release applies only with respect to offenses committed by a person before reaching the age of eighteen and for which the person received a sentence of more than ten years. If an inmate is serving a sentence in part based on an offense or offenses committed at the age of eighteen or above, the sentence for such offense or offenses is not subject to the parole eligibility rules of this proposal. In such instances, the Board may apply the parole eligibility rules of this proposal only with respect to the sentence for the offense or offenses committed under the age of eighteen. Any offense or offenses committed at the age of eighteen or above shall be subject to the parole eligibility rules provided in subsections (a) through (f) of 54-125a of the General Statutes.
- Counsel will be appointed to assist juvenile offenders in preparing for parole release hearings. At least twelve months prior to the hearing, the Board of Pardons and Paroles shall notify the Office of the Chief Public Defender and the appropriate state's attorney. The Office of the Chief Public Defender shall assign counsel for the person pursuant to section 51-296 of the General Statutes if the person is indigent. At the hearing, the board shall permit counsel for such person to submit reports and other documents. The state's attorney shall have the same opportunity. The person whose suitability for parole is being considered shall have an opportunity to make a personal statement on his or her own behalf. The board may, in its discretion, request testimony from mental health

professionals or other relevant witnesses. The victim shall be permitted to make a statement pursuant to section 54-126a of the general statutes.

- The Board of Pardons and Paroles may allow a person serving a sentence for a crime committed while he or she was under the age of eighteen who is eligible for parole to go at large on parole if the Board finds that such release would adhere to the purposes of sentencing set forth in General Statutes Sec. 54-300(c) and if it appears from all available information , including any reports from the Commissioner of Correction, counsel for the offender, the state's attorney, or that the Board may require, that (1) there is a reasonable probability that the offender, if released, will live and remain at liberty without violating the law; (2) the benefits to such offender and the public that would result from such release would substantially outweigh the benefits to the public that would result from the offender's continued incarceration; and (3) the offender has demonstrated substantial rehabilitation since the time of the offense, considering the offender's character, background and history, including but not limited to disciplinary record, the age at the time of the offense, whether the offender has demonstrated increased maturity since the time of the offense, remorse for the offense, contributions to the welfare of others through service, efforts to overcome substance abuse, addiction, trauma, lack of education or other obstacles that the offender may have faced as a youth in an adult prison environment, the opportunities for rehabilitation in an adult prison environment and the overall degree of rehabilitation in light of the nature of the offense.
- The Board shall use validated risk and needs assessments and its structured decision-making framework to assist in making its parole suitability decisions in such cases.